IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 125 OF 2005
With
CIVIL APPLICATION NO. 5961 OF 2005
In SECOND APPEAL NO. 125 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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JAMNADAS MAGANLAL RANA - Appellant(s)
Versus
RAMANBHAI SHANABHAI DHOBI & ORS. - Respondent(s)

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Appearance :
SHRI K.R. BRAHMBHATT for Appellant(s).
SHRI B.S. BRAHMBHATT for Respondent(s) : 1 - 8.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 18/12/2006

COMMON ORAL JUDGMENT

1. The appeal is admitted for hearing the parties on the following substantial questions of law:

(i) *Whether on the facts and in the circumstances of the case, the judgement delivered by the learned first Appellate Court can be called to be an illegal judgement and the findings arrived at by the learned first Appellate Court can be said to be illegal findings?*

(ii) *Whether on the facts and in the circumstances of the case, duty was cast upon the learned first Appellate Court to refer to the pleadings, to the issues, to the evidence, documentary and oral, to the arguments raised by the parties and only then, decide the dispute?*

With the consent of the parties, the matter is finally heard.

2. It is one of those unfortunate cases, where the learned first Appellate Court, without understanding what are its powers or without realising that what are its duties, has in a cryptic, cavalier and arbitrary manner decided the first appeal simply by observing that the learned trial Court has not committed any illegality.

Therefore, it would not be open to the Appellate Court to interfere in the matter.

3. I have gone through the entire judgement. The judgement runs into as many as five pages, but, unfortunately, the whole of the judgement, with due respect to the learned first Appellate Court, is absurd and amounts to non-exercise of the jurisdiction vested in the first Appellate Court.

4. It is trite to say that the first Appellate Court is the final Court of facts and it is obliged to record finding of facts on the issues which are contested hotly. The Appellate Court cannot simply say that as the findings recorded by the trial court are justified, it would not be necessary for the said Court to interfere. Even in a case where the Appellate Court is in general agreement with the findings recorded by the trial Court, then too, the Appellate Court is obliged and duty bound to refer to the pleadings of the parties, issues cast by the trial Court, evidence (documentary/oral) led by the parties, and only then, it can express general agreement. The Appellate Court in a proforma judgement cannot say that the appellant's Counsel had argued that the judgement of the trial Court is wrong, the judgement of

the trial Court is supported by the respondent and as no illegality is committed, the Appellate Court would not interfere. Paragraphs 6, 7, 8 and 9 if are bodily lifted from this judgement, the same can be used in any other judgement, except last two lines of paragraph-7 the whole of the judgement is a proforma judgement, it is cryptic and cavalier, it does not show application of mind, it does not show that the learned Judge even understood the arguments of the parties, it does not even show that what was argued before the Court. In paragraph 2, the learned Judge has observed that it was argued before it that the trial Court went wrong in making the order without appreciating the documentary evidence produced on record.

5. It is unfortunate that while proceeding fast, the Fast Track Court derailed itself and did not act in accordance with law. The Fast Track Court is created for fast disposal of the matters, but, not for grinding or grounding the matter or to bring an end to them.

6. A judge is not supposed to have a sword in his hand and start cutting the briefs of the counsel, but, he is supposed to have an understanding of law and must also have a tooth to understand the argument.

7. In the present case, the plaintiff had filed a suit for re-conveyance on the basis of a document; the defendant raised number of pleadings relating to non-maintainability of the suit; that the plaintiff was not entitled to a decree and that the plaintiff having failed in his first suit, the present suit was barred by the principles of *res judicata*. At least the question of *res judicata* was a question of law. The Appellate Court did not consider even the said question, but, simply observed that the lower Court has not made any mistake or illegality and the learned Court had not used powers arbitrarily, the Appellate Court would not change (interfere with) the discretion used by the lower Court. I fail to understand that by writing such judgement, what message the learned first Appellate Court wants to convey to the public.

8. Gone are the days of the princely States, where browbeating or a word from the king could decide the matter. We are living in the rule of law. The Courts are created for dispensing justice and not for dispensing with the justice. The exercise of powers by the Appellate Court in the present case is capricious, arbitrary and whimsical. The judgement is utterly bad and cannot be approved.

9. The judgement delivered by the learned first Appellate Court is hereby set aside. The matter is sent back to the learned District Judge for its hearing in accordance with law or for assigning the same to any other Judge.

A copy of this order be sent to the concerned Judge of the Appellate Court wherever posted he is, for his future guidance. A copy of this order be also kept in his service records and be also sent to the learned Inspecting Judge, Fast Track. The parties present in the Court shall appear before the learned District Judge, Kheda on 29th January, 2007. The appeal is allowed. No costs.

Let a decree be framed accordingly.

[R.S.Garg, J.]

*kamlesh**